

Message Text

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TAGS: EAIR, UK, FR

SUBJECT: CONCORDE LITIGATION - APPELLATE ARGUMENT

FOLLOWING IS A SUMMARY OF THE ARGUMENT WHICH TOOK PLACE
JUNE 1 BEFORE THE U.S. COURT OF APPEALS FOR THE 2ND
CIRCUIT CONCERNING CONCORDE LANDING RIGHTS AT JFK
AIRPORT.

1. THE COURT ORDERED CONTINUATION OF ITS STAY,
PRECLUDING THE START OF CONCORDE FLIGHTS TO JFK UNTIL
IT HAS RENDERED A DECISION.
2. ALL PARTIES HAVE BEEN GIVEN UNTIL NOON JUNE 8 TO
RESPOND TO THE AMICUS BRIEF OF THE FEDERAL GOVERNMENT,
DUE TO BE FILED JUNE 6.
3. IN GENERAL, ARGUMENTS FOCUSED ON THE QUESTION OF
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PREEMPTION WITH LITTLE INTEREST EXPRESSED BY THE COURT
IN THE LEGAL EFFECT OF INTERNATIONAL AGREEMENTS. FOR THE
MOST PART, DISCUSSION OF INTERNATIONAL LAW WAS LIMITED
TO THE QUESTION OF WHETHER THE PORT AUTHORITY BAN WAS A
LAW OR REGULATION WITHIN THE MEANING OF THE BILATERAL
AGREEMENTS. COUNSEL FOR THE PORT AUTHORITY ARGUED

THAT IT WAS, WHILE COUNSEL FOR THE CARRIERS ARGUED THAT IT WAS NOT.

4. OF THE PANEL, JUDGE KAUFMAN SEEMED IMPRESSED BY THE PREEMPTION ARGUMENT OF THE CARRIERS AND BY THE DECISION OF DISTRICT JUDGE POLLACK, WHILE JUDGE MANSFIELD APPEARED TO TAKE THE POSITION THAT THE FEDERAL GOVERNMENT HAD NOT PREEMPTED THE PORT AUTHORITY'S ACTION IN THIS CASE. JUDGE VAN GRAAFEILLAND SEEMED TO BE SOMEWHERE IN THE MIDDLE. MANSFIELD REPEATEDLY REFERRED TO STATEMENTS BY SECRETARIES COLEMAN AND ADAMS AND PRESIDENT CARTER TO THE EFFECT THAT THE FEDERAL GOVERNMENT DID NOT INTEND TO PREEMPT THE DECISION OF THE PORT AUTHORITY. JUDGE KAUFMAN SUGGESTED THAT IT WAS IN THE INTEREST OF DOMESTIC SST POLICY TO HAVE ONE AGENCY IN CHARGE AND ASKED IF THIS WOULD BE ACHIEVED IF THE PORT AUTHORITY COULD NULLIFY THE FEDERAL GOVERNMENT'S DECISION TO AUTHORIZE A 16-MONTH TEST. KAUFMAN ALSO SEEMED TO BE IMPRESSED WITH THE BROAD POWERS VESTED BY THE FEDERAL AVIATION ACT AND DEPARTMENT OF TRANSPORTATION ACT.

5. COUNSEL FOR THE CARRIERS ARGUED THAT FEDERAL STATEMENTS DENYING PREEMPTION WERE MERELY AN ATTEMPT BY THE FEDERAL GOVERNMENT "TO KEEP THE BALL OF LIABILITY BOUNCING." HE ALSO ARGUED THAT THE FEDERAL GOVERNMENT'S INTENT NOT TO PREEMPT WAS IRRELEVANT AS A LEGAL MATTER AND THAT THE COURT SHOULD JUDGE THE QUESTION OF PREEMPTION BY LOOKING AT THE FEDERAL ACTION TAKEN AND UNCLASSIFIED

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WHETHER THE LOCAL REGULATION THWARTS THAT FEDERAL ACTION.

6. COUNSEL FOR THE PORT AUTHORITY ARGUED THAT REGARDLESS OF WHETHER THE FEDERAL GOVERNMENT HAS THE POWER TO PREEMPT THE PORT AUTHORITY, IT HAS NOT DONE SO IN THIS CASE. HE SAID PORT AUTHORITY CONSULTANTS WERE STILL CONVINCED CONCORDE CANNOT MEET THE PORT'S 112 PNDB NOISE STANDARD.
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